



STATE OF WASHINGTON

## UTILITIES AND TRANSPORTATION COMMISSION

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October 11, 2017

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. SW  
P.O. Box 47250  
Olympia, Washington 98504-7250

RE: *Washington Utilities and Transportation Commission v. Sean T. Brooks Moving, Incorporated d/b/a Sean T. Brooks Moving*  
Commission Staff's Response to Application for Mitigation of Penalties  
Docket TV-170979

Dear Mr. King:

On July 19, 2017, Motor Carrier Safety Investigator Jason Sharp conducted a compliance review investigation, an in-depth examination of the motor carrier's compliance with regulations that the FMCSA has identified as "acute" or "critical."<sup>1</sup> Acute regulations are identified where non-compliance is so severe as to require immediate corrective action regardless of the overall safety posture of the motor carrier. Violations of critical regulations are generally indicative of breakdowns in a carrier's management controls. Non-compliance with acute regulations and patterns of non-compliance with critical regulations are quantitatively linked to inadequate safety management controls and unusually higher than average accident rates.<sup>2</sup> Mr. Sharp documented 109 violations of critical regulations, all of which were first-time violations, resulting in a conditional safety rating.

The Washington Utilities and Transportation Commission's (Commission) Enforcement Policy provides that some Commission requirements are so essential to safe operations that the Commission may issue penalties for a first-time violation, even if Commission Staff (Staff) has not previously provided technical assistance on specific issues. The Commission will assess penalties for any repeat violations of critical regulations, including for each occurrence of a repeat violation.<sup>3</sup>

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<sup>1</sup> Code of Federal Regulations, Appendix B to Part 385—Explanation of safety rating process

<sup>2</sup> *Id.*

<sup>3</sup> Docket A-120061 – Enforcement Policy of the Washington Utilities & Transportation Commission – Section V.

Revised Code of Washington (RCW) 81.04.405 allows penalties of one hundred dollars for each violation of Title 49 Code of Federal Regulations (CFR) Part 391 and Washington Administrative Code (WAC) 480-15-555. In the case of an ongoing violation, every day's continuance is considered a separate and distinct violation.

Sean T. Brooks Moving, Incorporated d/b/a Sean T. Brooks Moving (STB Moving or Company) operates as a household goods carrier under permit number HG-64125. In its application for household goods moving authority filed with the Commission in December 2010, Sean Brooks, owner of STB Moving, acknowledged the Company's responsibility to understand and comply with applicable motor carrier safety rules and regulations. On April 11, 2012, Sean Brooks attended household goods training provided by Staff and acknowledged that training was received pertaining to motor carrier safety regulations. In the Company's May 2015 application for transfer of household goods moving authority, Sean Brooks again acknowledged his Company's responsibility to understand and comply with applicable motor carrier safety regulations.

On September 21, 2017, the Commission issued Penalty Assessment TV-170979 against STB Moving in the amount of \$10,700 for 109 critical violations of WAC 480-15-555 Criminal Background Checks for Prospective Employees, and WAC 480-15-570 Driver Safety Requirements, which requires household goods carriers to comply with Title 49 CFR Part 391 – Qualifications of Drivers, as follows:

- **One-hundred five violations of Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** STB Moving allowed employees Brian Erickson and Thomas Wittman to drive on 105 separate occasions without having been medically examined and certified.
- **Three violations of Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** STB Moving failed to maintain a driver qualification file for drivers Brian Erickson, Thomas Wittman, and Jacob Palmer.
- **One violation of WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** STB Moving failed to obtain a criminal background check for Thomas Wittman. Effective December 16, 2013, each household goods carrier must complete a criminal background check for every person the carrier intends to hire. Mr. Wittman was hired on April 7, 2014 without the carrier completing a background check.

On October 5, 2017, STB Moving filed with the Commission its application for mitigation of penalties. Sean and Suzanne Brooks, owners of STB Moving, admit the violations, provide explanations with supporting documentation for the corrective action steps taken by the Company, and ask that the penalties be reduced for reasons set out in the response. Staff found the Company's response to be very thorough, and provides its response below:

- **Mitigation Request: Title 49 CFR Part 391.45(a) – Using a driver not medically examined and certified.** STB Moving states that when it was informed by the Commission that commercial driver's licenses were not required for its drivers, the

Commission never informed the Company that its drivers needed to be medically examined and certified. STB Moving states that it immediately had both Brian Erickson and Thomas Wittman get medically examined and certified upon learning of this requirement, and provided a copy of each employee's valid medical certificate. STB Moving also states that a penalty of \$10,500 would force the Company to close its business.

**Staff response:** It is STB Moving's responsibility to ensure that its drivers have current medical certificates, and that the Company not allow its drivers to operate a motor vehicle when medical certification cannot be verified. Sean Brooks acknowledged STB Moving's responsibility to understand and comply with applicable motor carrier safety regulations on numerous occasions prior to the compliance review on July 19, 2017.

However, the Company promptly corrected these first-time violations and provided copies of valid medical certificates for both Brian Erickson and Thomas Wittman to prevent future occurrences of this fundamental safety requirement. Staff is also sensitive to the Company's financial situation and understands the impacts a significant penalty would have on a small business. It is for these reasons that Staff recommends a reduction of this penalty.

The assessed penalty is \$10,500 for 105 occurrences of this violation. Staff recommends the penalty be reduced by half, for a total of \$5,250. Staff further recommends that \$3,950 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) the Company not incur any repeat violations of critical regulations, 2) Staff conducts a follow-up safety investigation in two years to review the Company's safety management practices, and 3) STB Moving pays the portion of the penalty that is not suspended.

- **Mitigation Request: Title 49 CFR Part 391.51(a) – Failing to maintain a driver qualification file for each driver it employs.** STB Moving states that it was unaware of the driver qualification file requirements prior to the compliance review, but has since created and currently maintains a driver qualification file for each of its drivers. The Company provided copies of all the documents present in the driver qualification files for Brian Erickson, Thomas Wittman, and Jacob Palmer.

**Staff response:** STB Moving promptly corrected these first-time violations and provided supporting documentation, confirming compliance with this safety requirement.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

- **Mitigation Request: WAC 480-15-555 – Failing to acquire criminal background check of prospective employee.** STB Moving states that it was unaware of the requirement to obtain a criminal background check for all of its employees prior to the compliance review. The Company states that it has since contacted the Washington State Patrol and acquired each of its employees' histories, none of which reflect any criminal

history. In addition, STB Moving provided supporting documentation for all of its employees' criminal background checks.

**Staff response:** An employee with an unknown criminal history raises serious concerns about the security of the customer's belongings, as well as the customer's personal safety. STB Moving has corrected this first-time violation of a fundamental safety requirement, and provided Staff with supporting documentation of its employees' criminal background checks.

The assessed penalty is \$100 for one violation of this type. Staff recommends no mitigation of this penalty.

STB Moving is a small company with three full-time drivers. The Company owns one vehicle that is not classified as a commercial motor vehicle, and leases box trucks when needed. STB Moving reported \$316,253 in gross revenue and 3,953 miles traveled in 2016.

Staff recommends that the penalty of \$10,700 be reduced to \$5,450. Staff further recommends that \$3,950 of the reduced penalty be suspended for a period of two years before being waived, on the conditions that: 1) the Company not incur any repeat violations of critical regulations, 2) Staff conducts a follow-up safety investigation in two years to review the Company's safety management practices, and 3) STB Moving pays the \$1,500 portion of the penalty that is not suspended.

If you have any questions, please contact Jason Hoxit, Compliance Investigator, Consumer Protection, at 360-664-1320, or by e-mail at [JHoxit@utc.wa.gov](mailto:JHoxit@utc.wa.gov).

Sincerely,



Bridgit Feeser  
Assistant Director, Consumer Protection